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I. EXCERPTS FROM THE BILLS

(adopted by the Multi-Party Negotiating Council and the South African Parliament on 23 September 1993)

A. Transitional Executive Council Bill

To establish a Transitional Executive Council with a view to promote the preparation for and transition to a democratic order in South Africa; and to provide for matters connected therewith.

Objects of Council

3. The objects of the Council shall be to facilitate and promote, in conjunction with all legislative and executive structures at all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by -

(a) creating and promoting a climate for free political participation;

(b) creating and promoting conditions conducive to the holding of free and fair elections;

(c) exercising such powers and performing such duties as may be conferred upon or assigned to it by any other law.

Constitution of Council

4. (1) Each Government, political party or organization which

(a) is or was at any time represented on the Negotiating Council; and

(b) by notice in writing to the Negotiating Council commits itself to

(i) undertake to be bound by and to implement the directions the Council issued in terms of this Act; and

(ii) renounce violence as a means of achieving political objectives

shall be a participant in the council and shall be entitled to be represented by one member on the Council.

(2) The Government of or any political party registered only in or operating only from or any organization operating only from the Republic of Transkei, Bophuthatswana, Venda or Ciskei shall not be a participant in the Council unless -

(a) the provisions of this Act, as well as the provisions of the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993 and the Independent Broadcasting Authority Act, 1993, have been incorporated into the law of the State concerned; or

(b) formal provision has been made by law in such State for the application of any Act referred to in paragraph (a) in that State.

General powers of Council

7. (1) The Council shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of achieving its objects, have the power to -

(a) request and obtain information and documents as may be necessary;

(b) direct a subcouncil to enquire into and to advise the Council on any matter in connection with the functions of the Council;

(c) initiate or participate in negotiations relating to its functions and objects;

(j) take such steps, including legal steps, as necessary to give effect to this Act or any decision taken by the Council or a subcouncil.

(2) The Council may delegate to a subcouncil any of its powers.

(3) In respect of any power delegated to a subcouncil, the Council -

(d) may review, amend or withdraw any such decision or recommendation of a subcouncil.

Subcouncils

Establishment of subcouncils

8. (1) There are hereby established the following subcouncils under the control and supervision of the Council:

(a) Subcouncil on Regional and Local Government and Traditional Authorities;

(b) Subcouncil on Law and Order, Stability and Security;

(c) Subcouncil on Defence;

(d) Subcouncil on Finance;

(e) Subcouncil on Foreign Affairs;

(f) Subcouncil on the Status of Women; and

(g) Subcouncil on Intelligence.

(2) (a) Additional subcouncils may be established at the request of the Council by means of an amendment to this Act.

(b) If any dispute between the Council and the State President were to arise as to the necessity of establishing such subcouncils, the matter shall be referred to the Special Electoral Court for determination.

Constitution of subcouncils

9. (1) The members of the subcouncils shall be appointed in a full-time capacity by the Council.

(2) (b) The subcouncils referred to in section 8(1)(b), (c) and (g), shall each have eight members.

(c) The subcouncils referred to in section 8(1)(a), (d), (e) and (f), shall each have six members.

(3) The Council shall not appoint more than one person representing any participant in the Council on a particular subcouncil.

Powers and duties in regard to regional and local government and traditional authorities

14. The Council shall, through its Subcouncil on Regional and Local Government, have the power:

(a) To acquaint itself with and monitor developments, policy objectives and targets in relation to regional and local government, relevant organizations active in the field of local government and traditional authorities;

(b) in regard to regional and local government matters, to propose the amendment, repeal or enactment of legislation;

(c) to promote the objects of the Council generally and to educate the public on the electoral processes;

(d) to liaise with all organizations and bodies relevant to the functions of the subcouncil;

(e) to be advised of and to make proposals regarding regional and local government budgets, the powers, duties and functions and the restructuring and rationalization of regional and local government administrations;

(h) to make recommendations to the appropriate institutions and authorities on -

(i) legislative and executive measures, which may affect traditional leaders' powers during the transition;

(ii) free and fair political participation in areas in respect of which traditional leaders exercise their powers; and

(iii) matters of material concern to traditional leaders and their communities.

Powers and duties in regard to law and order, stability and security

15. (1) The Council shall, through its Subcouncil on Law and Order, Stability and Security, have the following powers:

(a) To establish a national inspectorate comprised of members of policing agencies and such other persons as the Subcouncil may determine;

(b) to investigate, or order the investigation by the national inspectorate of, any matter relating to the functions of the Subcouncil;

(c) to establish a national independent complaints mechanism under the control of a civilian, which shall be responsible for the receipt and investigation of complaints lodged by members of the public concerning alleged police misconduct;

(e) to establish a committee comprised of local experts or of local and foreign experts, to evaluate or monitor any police action, conduct or reform which relates to the objects of the Council.

(2) (a) The power of the State President to declare the existence of a state of emergency shall only be exercised after consultation with the Subcouncil.

(b) The Council may by a decision which has the support of at least 80 per cent of the members of the Council,

review such a declaration and direct the State President to withdraw it, and the State President shall forthwith comply with such direction.

Powers and duties in regard to defence

16. (2) The Council shall, through its Subcouncil on Defence, have to power to:

(c) investigate through an independent body appointed or designated by the Subcouncil, or order the investigation of the conduct of any member or members of a military force which is likely to have an adverse effect on the attainment of the objects of the Council;

(e) formulate a code of conduct, which shall be made legally binding on all members of all military forces, and to monitor its observance;

(g) oversee any planning, preparation and training for a future South African defence force;

(4) (a) The Council shall, in consultation with the Minister of Defence, make regulations

(i) governing the deployment of any defence force unit in crime-prevention of peacekeeping operations; and

(ii) the relationship and interaction between such unit and any other unit of a defence force, the National Peacekeeping Force or any policing agency involved in such operations,

and any such deployment and the discontinuance of such deployment shall take place only in accordance with such regulations and with the concurrence of both the said Minister and the Subcouncil.

(6) The Subcouncil may establish -

(a) monitoring mechanisms to ensure that its directives are complied with; and

(b) any mechanism to ensure appropriate interaction between itself, the various military forces, the National Peacekeeping Force, policing agencies and any other relevant agency at national, regional or local level.

(10) (a) The Subcouncil shall budget for and be allocated the necessary resources to establish and maintain a force, to be known as the National Peacekeeping Force, whose functions shall

relate to the maintenance of peace and public order in South Africa.

(b) The National Peacekeeping Force shall be comprised of members of -

(i) all military forces, as far as practicable in equal numbers;

(ii) all policing agencies which fall under the authority and control of all the participants in the Council.

(11) The Subcouncil shall establish a National Peacekeeping Force Command Council, comprised of representatives of all the military forces and policing agencies which participate in the National Peacekeeping Force and which wish to be represented on that Council.

(12) The Subcouncil, in consultation with the National Peacekeeping Force Command Council, shall:

(a) establish the training of a unit of National Peacekeeping Force instructors who may be drawn from the participating military forces and policing agencies but shall also include foreign experts;

(e) make regulations regarding -

(i) the powers and duties of the National Peacekeeping Force;

(ii) the circumstances under which the National Peacekeeping Force may be deployed;

(v) a disciplinary code, including a code of conduct, for members of the National Peacekeeping Force;

(f) establish standard operational procedures for the National Peacekeeping Force.

<u>Powers and duties in regard to finance</u>

17. (1) The Council shall, through its Subcouncil on Finance:

(b) be represented on all function and budgeting committees in respect of the 1994/1995 fiscal year of any Government or regional authority;

(d) approve any measures designed to rationalize Treasury functions in the process of realignment of governmental structures;

(f) investigate corruption or inefficiency;

(g) monitor the contents of existing public service disciplinary codes;

(i) monitor any expenditure of State funds by any Government or any department of State or any institution funded wholly or partly from State funds.

(5) The Subcouncil shall be provided on a continuous basis with full particulars, including the intended purposes, concerning any new international financial agreement which is being negotiated between a Government and any foreign government or international agency, and no such agreement shall be concluded without the prior approval of the Subcouncil.

Powers and duties in regard to foreign affairs

18. The Council shall, through its Subcouncil on Foreign Affairs, in regard to foreign policy, liaise, monitor, make recommendations and assist with a view to -

(a) achieving progressively the broadest possible consensus on matters affecting South Africa's international interests;

(c) securing such international assistance as the Subcouncil considers necessary in order to address the socio-economic needs of the people as a whole;

(d) ensuring that any foreign policy initiative benefits the country as a whole; and

(e) promoting such international relations, including trade, finance, culture and sports relations.

Powers and duties in regard to the status of women

19. The Council shall, through its Subcouncil on the Status of Women, have the power to:

(b) propose amendments to existing or proposed legislation and facilitate the implementation of such legislation;

(e) investigate any matter which affects the status of women;

(g) promote and monitor educational programmes regarding the participation of women in the electoral process;

(h) ensure that positive practical steps are taken to enable all women to exercise fully their right to:

(i) vote in all elections and public referenda;

(ii) participate in the formulation and implementation of policy at all levels of government and in the Council;

(iv) be free from intimidation and harassment;

(j) submit proposals to the Subcouncil on Finance and the relevant departments of State in regard to the 1994/1995 budget on the allocation of resources for the promotion of the equality of women and their participation at all levels of government.

Powers and duties in regard to intelligence

20. (1) The Council shall, through its Subcouncil on Intelligence, have the power to:

(b) establish a Joint Coordinating Intelligence Committee, comprised of the head or a duly authorized senior representative of every service;

(c) adopt a set of basic principles on intelligence;

(d) formulate a code of conduct binding on all members of all services during the period of transition;

(e) monitor the compliance of all services and their members with the said code of conduct;

(h) request and obtain, subject to the other provisions of this Act, on a regular basis from all services, evaluated information on the overall security situation in the country.

Resolution of disputes

23. (1) When there is any disagreement between the Council or a subcouncil and any Government, administration, political party or any organization as to whether or not -

(a) matters within the scope of the powers of the Council or subcouncil;

(b) any proposed legislation or executive or other action may have an adverse impact on the attainment of the objects of the Council;

(c) such Government, administration, political party or organization is obliged to comply with a direction of the Council or subcouncil.

the Government, administration, political party or organization concerned may refer the matter to the Special Electoral Court for determination.

B. Independent Electoral Commission Bill

(Assented to by the State President on 18 October 1993)

To make provision for the conduct of free and fair elections for the National Assembly and any other legislature to be elected contemplated in the Constitution of the Republic of South Africa Act 1993: to make provision for the conduct of certain referendums by the Independent Electoral Commission; and to provide for matters in connection therewith.

Application of Act

2. (1) The provisions of this Act shall apply in respect of -

(a) the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act; and

(b) any referendum conducted under the supervision of the Commission in terms of subsection (2),

until the First Assembly and all other legislatures have been validly constituted.

(2) Upon the advice of the Transitional Council the State President shall by proclamation in the Gazette declare:

(a) the holding of a referendum; and

(b) that the provisions of this Act shall, apply in respect of the holding of that referendum.

Independent Electoral Commission

Establishment and objects of Commission

4. (2) The objects of the Commission shall be -

(a) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act;

(b) to promote conditions conducive to free and fair elections;

(c) to determine and certify the results of elections, and to certify to what extent such elections have been free and fair;

(d) to conduct voter education; and

(e) to make and enforce regulations for the achievement of such objects.

Constitution of Commission

5. (1) The Commission shall consist of not fewer than seven and not more than 11 members, who shall be appointed by the State President upon the advice of the Transitional Council.

(2) (a) The State President shall, upon the advice of the Transitional council, appoint not more than five persons from the international community as members of the Commission in a non-representative capacity.

(b) Such international members shall have the same rights and powers as other members, excluding the power to vote.

(3) (a) The State President shall, upon the advice of the Transitional Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively:

(c) The international members shall not be eligible to serve as Chairperson, Co-Chairperson, Vice-Chairperson or acting Chairperson.

(4) The State President shall from time to time, upon the advice of the Transitional Council, appoint additional members to the Commission, subject to the maximum number contemplated in that subsection.

Conduct required of members

6. (1) Every member and international member of the Commission shall -

(a) be appointed in his or her individual capacity, and serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.

(2) No member or international member of the Commission shall -

(a) during his or her term of office be eligible for appointment or nomination to any political or public office, whether involving remuneration or not.

Disclosure of conflicting interests

7. (1) A member or international member shall not at any meeting of the Commission -

(a) be present;

(b) exercise a vote;

(c) in any other manner participate in the proceedings thereof, during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest.

Independence of Commission

8. (1) The Commission shall function without political or other bias or interference and shall be independent and separate from the Transitional Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity.

Powers, duties and functions of Commission

13. (2) The Commission shall -

(a) assume responsibility for the administration, organization and conduct, whether directly or indirectly, and the supervision of the administration, organization and conduct of any election;

(b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties;

(c) be responsible for the education of voters concerning -

(i) democratic principles and values;

(ii) the electoral process and mechanisms;

(iii) the right to free political canvassing and campaigning;

(iv) secrecy of voting; and

(v) any other relevant matter, by means of -

(aa) literature and the use of other media; and

(bb) workshops, seminars and meetings.

(3) The Commission shall have power -

(a) to hear and determine appeals against decisions or actions of the Chief Directors: Administration and Monitoring;

(c) to establish such committees as it may consider necessary for the effective exercise and performance of its powers, duties and functions, and determine the composition, quorum for a meeting and a decision, procedure and functions thereof.

International Advisory Committee

14. (1) The State President shall, upon the advice of the Transitional Council, establish the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions.

(2) The International Advisory Committee may consist of persons (not being citizens of the Republic) from the international community appointed in a non-representative capacity by the State President upon the advice of the Transitional Council.

(3) The International Advisory Committee may determine its own procedures to be followed at its meetings.

Determination and certification of election results, or declaration

18. Upon completion of the ballot, the Commission shall as expeditiously as possible, but not sooner than two days and not later than ten days after the close of the poll -

(a) determine and certify the results of the election; and

(b) either certify in respect of the National Assembly and each other legislature that the election was substantially free and fair; or

(c) declare that it was unable to certify it as such.

Election Administration Directorate

Constitution of Election Administration Directorate

20. (1) The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors and such other officials as the Commission may consider necessary.

Powers, duties and functions of Chief Director: Administration

(2) Any decision or action taken by any functionary of any substructure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Administration, who may confirm, vary or set aside any such decision or action.

(3) The Chief Director: Administration shall -

(a) operate independently of the Chief Director: Monitoring and the Secretary;

(b) be under the supervision of the Commission.

Constitution of Election Monitoring Directorate

23. (1) The Monitoring Directorate shall consist of a Chief Director: Monitoring and such other officials as the Commission may consider necessary.

Powers, duties and functions of Chief Director: Monitoring

24. (1) The Chief Director: Monitoring shall -

(a) appoint monitors and coordinate their functions to observe and report to him or her upon the electoral process;

(b) register observers and regulate their activities, and publish guidelines and, if necessary, a Code of Conduct binding upon all such observers;

(c) facilitate the role of international observers and provide them with information and assistance;

(d) investigate alleged infringements of the Electoral Code of Conduct, other alleged electoral offenses and;

(i) operate independently of the Chief Director: Administration and the Secretary;

Election Adjudication Secretariat

Constitution of Election Adjudication Secretariat

26. (1) The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary.

Powers, duties and functions of Secretary

27. (1) The Secretary shall -

(a) coordinate the functions of the Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court;

(c) operate independently of the Chief Directors: Administration and Monitoring.

Electoral Tribunal

Establishment and constitution of Electoral Tribunals

28. (1) The Commission shall establish such number of Electoral Tribunals with jurisdiction to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct.

(2) An Electoral Tribunal shall consist of one person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities, appointed to that office by the Commission.

Powers, duties and functions of Electoral Tribunals

29. (1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter.

(2) An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of conduct, may impose any such penalty or sanction as may be prescribed in terms of this Act.

Electoral Appeals Tribunals

Establishment and constitution of Electoral Appeals Tribunals

30. (1) The Commission shall establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and to review decisions from the Electoral Tribunals.

(2) An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission -

(a) the Chairperson shall be a judge of the Supreme Court;

(b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience;

(c) one shall be a suitable person, who may or may not be legally qualified or experienced.

Powers, duties and functions of Electoral Appeal Tribunals

31. (1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into the matter, consider it and confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal.

Special Electoral Court

Establishment and constitution of Special Electoral Court

32. (2) The Special Electoral Court shall consist of -

(a) a Chairperson, who shall be a judge of the Appellate Division of the Supreme Court, and two judges of the Supreme Court designated by the Chief Justice; and

(b) two other members, of whom -

(i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience and

(ii) one shall be a suitable person, who may or may not be legally appointed by the Transitional Council.

Powers, duties and functions of Special Electoral Court

33. (1) (a) Subject to section 36(6)(a), the Special Electoral Court shall have power to review any decision of the Commission.

General Provisions

Appeal and review

36. (6) Any -

(a) decision of the Commission in terms of section 18; and

(b) decision or order of the Special Electoral Court, shall be final and not subject to appeal or review.

C. Independent Media Commission Bill

To establish the Independent Media Commission for the purpose of ensuring, during the period of the first national election for the National Assembly and other legislatures under the Constitution, held after the commencement of this Act, the equitable treatment of political parties by broadcasting services and that state-financed publications and state information services do not advance the interests of any political party.

3. Primary objects of Commission

The primary objects of the Commission shall be -

(a) to ensure equitable treatment of all political parties by broadcasting services; and

(b) to ensure that state-financed publications and state information services are not, directly or indirectly, used to advance the interests of any political party, whether directly or indirectly,

during the election period, so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.

4. Constitution of Commission and appointment of commissioners

(1) The Commission shall consist of -

(a) a chairperson; and

(b) not more than six other members.

(2) (a) Each commissioner, including the chairperson, shall be appointed by the Transitional Executive Council.

5. Persons qualified to be commissioners

(1) The chairpersons of the Commission shall be -

(a) a judge or retired judge of the Supreme Court of South Africa; or

(b) a practising advocate or practising attorney of at least ten years' standing or a magistrate with at least ten years' appropriate experience.

(2) At least two of the commissioners shall have experience in the field of the broadcasting media and at least one in the field of the print media.

6. Persons disqualified from being commissioners

(1) A person shall not be appointed or remain a commissioner if such person -

(b) holds an office of profit under the State;

(c) is a member of Parliament or of the Transitional Executive Council or of any provincial government or is a member of the legislature of the Republic of Transkei, the Republic of Bophuthatswana, the Republic of Venda or the Republic of Ciskei or of any self-governing territory, or is a member of any local authority;

(d) is, or during the preceding twelve months was an office-bearer or employee of any party, movement, organization or body of a party political nature;

(e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;

14. Staff of Commission

(1) (a) The Commission shall appoint a chief administrative officer for the purpose of assisting the Commission in the performance of all financial, administrative and clerical functions and work arising from the implementation of this Act.

(b) The Commission shall appoint such other staff as it deems necessary.

15. Establishment and appointment of committees of Commission

(1) The Commission shall establish and appoint the following two committees -

(a) a broadcasting committee; and

(b) a state-financed publication and state information services committee.

(2) The Commission may establish and appoint such other committees for such purposes as it may deem necessary.

16. Appointment of experts

(1) The Commission may appoint as many experts, including experts from other countries, as may be deemed necessary with a view to assisting it in the exercise and performance of its powers, functions and duties.

17. Powers and functions of Commission

(1) The Commission shall -

(a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of this Act relating to -

(i) party election broadcasts and political advertisements; and

(ii) equitable treatment of all political parties; and

(b) monitor all state-financed publications and state information services,

during the election period, in accordance with the provisions of this Act.

18. Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except during the election period.

19. Party election broadcasts on sound broadcasting services during election period

(1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during the election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorized representative.

(7) No party election broadcast shall be broadcast later than forty-eight hours prior to the commencement of the polling period.

20. Political advertising on sound broadcasting services during election period

(1) A sound broadcasting licensee shall not be required to broadcast a political advertisement.

(3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

(6) No political advertisement shall be broadcast later than forty-eight hours prior to the commencement of the polling period.

21. Equitable treatment of political parties by all broadcasting licensees during election period

(1) If during the election period the coverage of any broadcasting service extends to the field of the election and the political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such political party having been afforded an opportunity to respond thereto, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.

22. State-financed publications and state information services

(1) The publisher of any state-financed publication in existence immediately prior to the commencement of this Act shall be required, within fourteen days to submit to the Commission the prescribed information concerning such publication.

(2) The publisher of any state-financed publication which is published for the first time after the commencement of this Act, shall be required, no less than fourteen days prior to the proposed date of publication, to submit to the Commission the prescribed information concerning such publication.

(5) No state-financed publication shall contain any advertisement or other material which is intended or calculated to support or advance the interests of any political party, whether directly or indirectly.

23. Hearings

(1) Any political party which has reason to believe that a broadcasting licensee, the publisher of a state-financed publication or any state information service has contravened the provisions of this Act in relation to such party may lodge a complaint with the Commission.

(4) The Commission shall as soon as may be reasonably practicable, having due regard to the urgency of the matter, investigate and adjudicate any complaint received by it.

24. Orders and recommendations of Commission

(1) If the Commission, in making a ruling, has found the respondent to have contravened the provisions of this Act, it may:

(a) make an order requiring a respondent -

(i) who is a public sound broadcasting licensee, to broadcast a party election broadcast;

(ii) who is a sound broadcasting licensee, to broadcast a political advertisement;

(iii) who is a broadcasting licensee, to broadcast a counter-version of the programme complained of;

(b) order the respondent to pay such financial penalty as it may determine;

(c) make an order prohibiting him or her from carrying on his or her broadcasting service for such period as the Commission may determine;

32. Application of this Act in respect of certain private broadcasters licensed elsewhere

The provisions of this Act shall also apply in respect of the persons in control of the broadcasting services known as "Radio 702", "Capital Radio" and "Trinity Broadcasting Network" as if such persons were broadcasting licensees.

D. Independent Broadcasting Authority Bill

To provide for the regulation of broadcasting activities in the public interests; for that purpose to establish the Independent Broadcasting Authority which shall function wholly independent from State, governmental and party political influences and free from political or other bias or interference; to provide for the representation of the Authority by and its functioning through a council; to define its powers, functions and duties; to provide for the devolution of powers relating to the administration, management, planning and use of the broadcasting services frequency bands to the said Authority; and to provide for incidental matters.

Chapter 1

INTRODUCTORY PROVISIONS

2. Primary objects of Act

The primary object of this Act is to provide through the Independent Broadcasting Authority established by section 3 for that purpose to -

(1) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;

(2) promote the development of public, private and community broadcasting services which are responsive to the needs of the public;

(3) ensure that broadcasting services, viewed collectively -

(a) develop and protect a national and regional identity, culture and character;

(4) protect the integrity and viability of public broadcasting services;

(5) ensure that, in the provision of public broadcasting services -

(a) the needs of language, cultural and religious groups;

(b) the needs of the constituent regions of the Republic and local communities; and

(c) the need for educational programmes,

are duly taken into account;

(6) encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;

(13) ensure that broadcasting signal distribution facilities are made available in respect of all licensed broadcasting services;

(19) ensure equitable treatment of political parties by all broadcasting licensees during an election period;

(20) ensure that broadcasting licensees adhere to a code of conduct acceptable to the Independent Broadcasting Authority;

(21) encourage the provision of appropriate means for addressing complaints in relation to broadcasting services and broadcasting signal distribution.

Chapter 2

INDEPENDENT BROADCASTING AUTHORITY

3. Establishment of Independent Broadcasting Authority

(2) The Authority shall be governed and represented by the council referred to in section 4, and all acts of such council shall be the acts of the Authority.

(3) The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the State, the Government and its administration, any political party or any other functionary or body directly or indirectly representing the interests of the State, the Government or any political party.

4. Constitution of Council

(1) The membership of the Council shall consist of -

(a) a chairperson, and

(b) six other councillors,

appointed by the State President on the advice of the Transitional Executive council or, where the Transitional Executive Council has dissolved, by the National Assembly in accordance with the Constitution Act according to the following principles, namely -

(i) participation by the public in the nomination process;

(ii) transparency and openness; and

(iii) the publication of shortlists of candidates for appointment.

(3) If the Transitional Executive Council or the National Assembly so decides, it may advise the State President to appoint two co-chairpersons in lieu of one chairperson.

5. Persons disqualified from being or remaining councillors

(1) A person shall not be appointed or remain a councillor if such person -

(b) holds, or during the preceding twelve months held, an office of profit under the State;

(c) is a member of Parliament or any other legislature contemplated in the Constitution Act or is a member of any local authority;

(d) is, or during the preceding twelve months was, an office-bearer or employee of any party, movement, organization or body of a party political nature;

(e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;

(2) A person shall be eligible for appointment to the Council if such person divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.

14. Staff of Authority

(1) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority.

(2) The Council shall appoint such other staff for the Authority as it deems necessary.

Chapter 3

COMMITTEES, APPOINTMENT OF EXPERTS, AND INQUIRIES

21. Establishment and appointment of standing committees of Council

(1) The Council shall establish and appoint the following standing committees -

(a) the Broadcasting Technical Committee; and

(b) the Broadcasting Monitoring and Complaints Committee.

(2) The Council may establish and appoint such other standing committees for such purposes as it may deem necessary.

22. Constitution of standing committees

(1) Each standing committee shall consist of -

(a) at least one councillor designated by the Council; and

(b) two or four additional members, as the Council may determine from time to time.

(3) (a) In the case of the Broadcasting Monitoring and Complaints Committee, the chairperson shall be a judge or a retired judge of the Supreme Court of South Africa, a practising advocate or attorney of at least ten years' standing or a magistrate with at least ten years' appropriate experience.

(b) In the case of any other standing committee, the chairperson shall be the councillor concerned.

Chapter 4

CONTROL OF THE BROADCASTING FREQUENCY SPECTRUM

30. Broadcasting Technical Committee

The Broadcasting Technical Committee shall be responsible for -

(a) the administration, management and planning of the broadcasting services frequency bands in accordance with bilateral, multilateral or international regulation and with the provisions of this Act;

(b) the examination of all technical matters relevant to license applications in order to determine the technical eligibility of applicants for licences;

(c) the approval of technical parameters, signal standards, transmitters and transmission characteristics to be used by licensees;

(d) the inspection of the plant, installations, transmitters and other apparatus used or to be used by an licensee;

(e) all the monitoring and investigative functions of the Authority with regard to contraventions of sections 32 and 39;

(f) assisting the Broadcasting Monitoring and Complaints committee;

31. Frequency plan

(1) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any application for a new broadcasting licence is considered in terms of this Act, prepare a frequency plan whereby the maximum number of frequencies available for broadcasting services are determined.

(5) (a) The Authority shall annually review a frequency plan determined in terms of this section.

Chapter 5

BROADCASTING SIGNAL DISTRIBUTION LICENCES

32. Prohibition of broadcasting signal distribution without licence

No person shall provide broadcasting signal distribution unless provided under and in accordance with a licence issued to that person by the Authority.

33. Granting of broadcasting signal distribution licences

(1) A broadcasting signal distribution licenses

(a) may be granted to -

(i) a person who, as a common carrier, is to provide broadcasting signal distribution for broadcasting licensees;

(ii) a person who is to provide broadcasting signal distribution for broadcasting licensees on a selective and preferential basis;

(iii) a broadcasting licensee who chooses to provide broadcasting signal distribution for itself but not for any other broadcasting licensee;

Chapter 6

BROADCASTING LICENCES

39. Prohibition on provision of broadcasting service without broadcasting licence

A person shall not provide a broadcasting service unless such service is provided under and in accordance with a broadcasting licence issued to that person by the Authority.

40. Categories of broadcasting licences

(1) Subject to the provisions of this Act, the Authority may on such conditions as it may in any case determine, issue an applicant with a broadcasting licence to provide -

(a) a sound broadcasting service in -

(i) a public sound broadcasting service;

(ii) a private sound broadcasting service;

(iii) a community sound broadcasting service;

(b) a television broadcasting service in one or more of the following categories of services -

(i) a public television broadcasting service;

(ii) a private television broadcasting service;

(iii) a community television broadcasting service.

41. Application procedure in relation to broadcasting licences

(1) When the Authority intends inviting applications for a broadcasting licence, it shall cause a notice to that effect to be published in the Gazette.

44. Renewal of broadcasting licences

(1) An application for the renewal of a broadcasting licence may be made to the Authority by the broadcasting licensee not earlier than six months, and not later than 3 months, before the date on which it expires.

48. Limitations on foreign control of private broadcasting services

(1) One or more foreign persons shall not, whether directly or indirectly -

(a) exercise control over a private broadcasting licensee; or

(b) have financial or voting interest in a private broadcasting licensee exceeding twenty per cent in total.

(2) Not more than twenty per cent of the directors of a private broadcasting licensee may be foreign persons.

49. Limitations on control of private broadcasting services

(1) No person shall -

(a) directly or indirectly exercise control over more than one private television broadcasting licence;

(2) No person shall -

(a) be in a position to exercise control over more than two private FM sound broadcasting licences;

(4) No person shall -

(a) be in a position to exercise control over more than two private AM sound broadcasting licences;

50. Limitations on cross-media control of private broadcasting services

(1) Cross-media control of broadcasting services shall be subject to such limitations as from time to time determined by the Transitional Executive Council acting on the recommendation of the Authority.

51. Prohibition on granting of broadcasting licences to political entities

No broadcasting licence shall be granted to any party, movement, organization or body of a party political nature or any other alliance of a party political nature.

Chapter 7

BROADCASTING PROGRAMMES

56. Code of Conduct, and exemptions

(1) Subject to the provisions of subsection (2), all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services.

57. Control over advertisements

(1) All broadcasting licensees shall adhere to the Code of Advertising Practice as from time to time determined and administered by the Advertising Standards Authority of South Africa.

58. Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except during an election period and then only if and to the extent authorized by the provisions of sections 59 and 60.

59. Broadcasting of party election broadcasts on sound broadcasting services during election period

(1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorized representative.

(2) The Authority shall determine the time to be made available to political parties including the duration and scheduling of party election broadcasts.

(7) No party election broadcast shall be broadcast later than forty-eight hours prior to the commencement of the polling period.

60. Political advertising on sound broadcasting services during election period

(1) a sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.

(3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

(6) No political advertisement shall be broadcast later than forty-eight hours prior to the commencement of the polling period.

61. Equitable treatment of political parties by all broadcasting licensee during election period

(1) If during an election period the coverage by any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

(2) In the event of any criticism against a political party being levelled in a particular programme, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.

Chapter 8

ENFORCEMENT

62. Broadcasting Monitoring and Complaints Committee

(1) Subject to the provisions of sections 56 and 57, the Broadcasting Monitoring and Complaints Committee shall -

(a) monitor compliance or adherence by broadcasting licensees with -

(i) the terms, conditions, obligations and provisions of their broadcasting licences;

(ii) the Code of Conduct for Broadcasting Services as set out in Schedule 2 to this Act;

(iii) the Code of Advertising practice contemplated in subsection (1) of section 57;

(b) during an election period, monitor compliance by broadcasting licences with the provisions of sections 59,60 and 61;

(c) monitor compliance by broadcasting signal distribution licensees with the terms, conditions, obligations and provisions of their broadcasting signal distribution licences.

(3) The Broadcasting Monitoring and Complaints Committee shall inquire into and adjudicate any alleged or suspected non-compliance or non-adherence.

64. Recommendations of Broadcasting Monitoring and Complaints Committee

(1) Upon having made a finding, that any complaint adjudicated by it in terms of that section is justified, the Broadcasting Monitoring and Complaints Committee shall in writing make recommendations to the Authority as to which of the steps should be taken against the licensee in relation to which such finding was made, and forward its finding and such recommendations, together with the record of the adjudication proceedings, to the Authority for appropriate action.

66. Powers of Authority in cases of proven non-compliance with Act, licence conditions or certain codes of conduct and, in limited circumstances, with Independent Media Commission Act, 1993

(1) As soon as may be reasonably practicable after receipt of any record of adjudication and the finding and recommendations relevant thereto, as forwarded to it by the Broadcasting Monitoring and Complaints Committee, the Authority shall make any one or more of the following orders -

(a) where such finding is founded on non-compliance by the broadcasting licensee during an election period -

(i) requiring such broadcasting licensee to broadcast a party election broadcast or a political advertisement;

(ii) requiring the broadcasting licensee concerned to broadcast a counter-version of the programme complained of or of the facts or opinions expressed within such a programme.

whichever is applicable;

(c) directing the licensee to publish such finding free of charge and in the manner required by the Authority;

(d) directing the licensee to pay, as a penalty, the prescribed amount;

(f) prohibiting the licensee from carrying on his or her broadcasting service or broadcasting signal distribution service for such period as determined by the Authority, or revoking his or her licence.

(3) Where a licensee is temporarily prohibited from carrying on his or her service, the Authority may, for the duration of the period of such prohibition order -

(a) any premises and any transmitters, apparatus and other equipment used or capable of being used for that purpose, to be sealed;

(b) seize any transmitters, apparatus and other equipment so used or capable of being so used and retain the same for such period.

Schedule 2

CODE OF CONDUCT FOR BROADCASTING SERVICES

1. Preamble

The fundamental principle to be upheld is that the freedom of all broadcasting services is indivisible from, and subject to the same restraints as that of the individual and rests on the individual's fundamental right to be informed and freely to receive and to disseminate opinions.

2. General

Broadcasting services shall -

(1) not present material which is indecent or obscene or offensive to public morals, which is offensive to the religious convictions or feelings of a section of the population, which is likely to harm relations between sections of the population or is likely to prejudice the safety of the state or public order;

(2) not, without due care and sensitivity, present material which contains brutality, violence, atrocities, drug abuse and obscenity;

(3) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.

3. News

(1) Broadcasting services shall be obliged to report news truthfully, accurately and objectively.

(2) News shall be presented in the correct context and in a balanced manner, without an intentional or negligent departure from the facts whether by:

(a) distortion, exaggeration or misrepresentation;

(b) material omissions; or

(c) summarization.

(3) Only that which may reasonably be true, having due regard to the source of the news, may be presented as facts, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on facts or is

founded on opinion, allegation, rumour and supposition, it shall be presented in such manner as to indicate this clearly.

(4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in such a report.

(5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified spontaneously and without reservation or delay. The correction shall be presented with a degree of prominence and timing which is adequate and fair so as readily to attract attention.

(6) Report, photographs or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate. In particular, broadcasting services shall avoid the broadcasting of obscene and lascivious matter.

(7) The identify of rape victims and other victims of sexual violence shall not be broadcast without the consent of the victim.

4. Comment

(1) Broadcasting services shall be entitled to comment upon or criticize any actions or events of public importance.

(2) Comment shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

(3) Comment shall be an honest expression of opinion.

5. Controversial issues of public importance

(1) In presenting a programme in which controversial issues of public importance are discussed, a broadcaster shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time and at substantially the same time slot.

(2) A person whose views have been criticized in a broadcasting programme on a controversial issue of public importance, shall be given a reasonable opportunity by the broadcasting service to reply to such criticism, should that person so request.

6. Elections

During an election period, the provisions of sections 58, 59, 60 and 61 of this Act shall apply and all broadcasting services shall, in terms of these sections, be subject to the jurisdiction of the Authority.

7. Privacy

In so far as both news and comment are concerned, broadcasting services shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

8. Payment for information from a criminal

No payment shall be made to persons involved in crime or other notorious misbehaviour, or to persons who have been engaged in crime or other notorious misbehaviour in order obtain information concerning such behaviour, unless compelling societal interests indicate the contrary.

II. SUMMARY OF THE INTERIM CONSTITUTION FOR THE TRANSITIONAL PERIOD*/

(adopted by the Multi-Party Negotiating Forum on 18 November 1993)

1. Introduction

The Plenary of the Multiparty Negotiating Process reached agreement on an interim constitution for the transitional period on 18 November 1993 at the World Trade Centre in Kempton Park. On the basis of this interim constitution, the first non-racial democratic elections in South Africa will be held on 27 April 1994.

The interim constitution, inter alia, provides for a Government of National Unity (GNU), three tiers of democratic government and a chapter on fundamental rights. A bill will now be submitted for adoption by Parliament, which commences on 22 November 1993 for a short session. A schedule to the bill sets out justiciable constitutional principles binding on the final constitution.

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*/ Backgrounder No. 03/93 of 18 November 1993 issued by the Permanent Mission of South Africa to the United Nations.

The interim constitution also provides for the repeal of South African legislation which recognizes the independence of Transkei, Bophuthatswana, Venda and Ciskei (TBVC states). This legislation will also repeal the Self-Governing Territories Act, effectively ending the existence of the national states, i.e. KwaZulu, Qwa Qwa, Lebowa, Gazankulu, KwaNdebele and KaNgwane.

South Africa will be demarcated into nine provinces, consisting of the Eastern Transvaal, the Northern Transvaal, the Pretoria-Witwatersrand-Vereeniging (PWV) area, the North West, the Orange-Free State, Natal, Northern Cape, Western Cape and Eastern Cape.

2. Parliament

Parliament will consist of a 400-person National Assembly and a 90-person Senate.

The National Assembly will be made up of 200 persons from the national lists and 200 persons from the regional lists of the various political parties, elected on the basis of proportional representation.

The Senate will be made up of 10 persons elected indirectly by each of the nine Provincial Legislatures.

Ordinary laws will be passed by a simple majority in each house and if one house rejects a bill, it must be passed by a majority of the total number of the members of both houses.

Finance bills, such as the budget and taxation laws, can only be introduced by the National Assembly. Should the Senate reject such a bill, it will have to be reconsidered by the National Assembly.

Bills affecting provincial boundaries or the exercise of powers and functions allocated to provincial governments must be approved both by the National Assembly and the Senate. A bill which affects the exercise of powers or functions of a particular province only, shall also be approved by a majority of the Senators of that particular province.

3. President/Deputy Presidents

The Head of State will be an Executive President. The first President will be elected by the National Assembly at its first sitting.

Provision has also been made for Executive Deputy Presidents from parties that obtain 80 or more seats in the National Assembly. Should no party or only one party hold 80 or more seats in the National Assembly, the party holding the largest

number of seats and the party holding the second largest number of seats, shall each be entitled to designate one Executive Deputy President.

4. Cabinet

The multiparty Cabinet will be composed, according to proportional representation, of those parties that obtain 5 per cent or more of the vote in the election. The various portfolios will be designated by the President.

Decisions will be taken by consensus, in a manner which gives consideration to the spirit underlying the concept of a Government of national unity as well as the need for effective Government.

5. Provinces

Each of the nine provinces will have a Provincial Legislature, elected by proportional representation from the regional party lists of the various political parties.

The number of seats in a Provincial Legislature will be determined by dividing the total number of votes cast in a province by 50,000. Provincial Legislatures will, however, not have fewer than 30 or more than 100 seats.

Provincial Legislatures will pass legislation by a simple majority. These legislatures will have concurrent powers with the national Government to make laws on issues set out in a schedule of the constitution which include the following: local government, agriculture, police, environment, provincial planning and development, urban and rural development, provincial language policy, housing, public transport, health and welfare, education at primary and secondary level, cultural matters, traditional authorities, tourism, public transport, roads, traffic control, trade and industry, nature conservation, racing and betting, casinos and public media within the province.

Each province shall be entitled to an equitable share of revenue collected nationally.

A Financial and Fiscal Commission will be appointed by the President in terms of the constitution within 60 days of its coming into operation. This Commission will apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, render advice and make recommendations to the relevant legislative authorities regarding the financial and fiscal requirements of the national, provincial and local governments.

A provincial government will be entitled to raise other taxes, surcharges or levies provided that they are authorized to do so by an Act of Parliament, taking into account the recommendations of the Financial and Fiscal Commission.

Each province will have a Provincial Executive Council consisting of a Premier and 10 executive members to administer provincial departments and determine policy. A party must obtain at least 10 per cent of the seats in the Provincial Legislature to qualify for an executive portfolio. The multiparty Provincial Executive Council will take decisions by consensus.

Shortly after the election on 27 April 1994, each Provisional Legislature will be entitled to adopt a constitution for the province, as long as it is consistent with the constitutional principles and with the national constitution.

6. Local Government

The constitution makes provision for autonomous third tier government.

7. Traditional Authorities

Traditional leaders will be accommodated ex officio at the local government level.

A House of Traditional Leaders will be established in each province.

A Council of Traditional Leaders will be established at national level, composed of not more than 20 representatives.

8. Restitution of Land

The constitution provides that any person who, or any community which, at any time after a date fixed by an Act of Parliament, which date shall not be earlier than 19 June 1913, was dispossessed of a right in land under, or for the purpose of furthering the object of, any law which would have been inconsistent with the prohibition of racial discrimination contained in the constitution, had that section been in operation at the time of such dispossession, shall be entitled to claim restitution in a court of law in respect of such right from the state.

A commission, established by legislation, will investigate the merits of any claims, mediate and settle disputes arising from such claims and draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court.

9. Constitutional Court

The Constitutional Court will have the final jurisdiction on matters relating to the interpretation, protection and enforcement of the constitution at all levels of government.

Disputes between the various levels of government will, therefore, be settled by the Constitutional Court.

The Constitutional Court will also certify that any amendments made to the constitution, as well as the final constitution, complies with the constitutional principles.

The Constitutional Court must also protect the fundamental rights and freedoms contained in the constitution. These rights can only be suspended under a state of emergency.

A decision by the Constitutional Court will be final and binding.

10. Ordinary Courts

The existing courts structure, which makes provision for two tiers of courts, will remain largely intact during the transitional period. (One tier is the Supreme Court, which consists of the Appellate division and various Provincial and Local Divisions; the other is the lower courts which consist of Regional and District Magistrate's Courts and of Chiefs and Headmen.)

11. Constitutional Assembly

The elected Constitutional Assembly, i.e. the National Assembly and Senate sitting in joint session, must draft a final constitution for South Africa.

It will be bound by the justiciable constitutional principles adopted by the Plenary of the Multiparty Negotiating Process on 17/18 November 1993. These principles provide for multiparty democracy, three tiers of government and the recognition of civil liberties.

A final constitution, drafted by the elected representatives of the people of South Africa, will be adopted by two-thirds of the members of the Constitutional Assembly within two years after its first session. If the necessary two-thirds majority is not obtained in the Constitutional Assembly, certain deadlock-breaking mechanisms will come into play, culminating in the adoption of the final constitution by a 60 per cent majority in a referendum.

Once the final constitution has been adopted by the Constitutional Assembly, in accordance with the constitutional principles, it will be implemented.

The multiparty Cabinet and Government of National Unity will continue to function until 27 April 1994, when the next democratic election will be held in South Africa.

Should the multiparty Cabinet, however, at any time lose the confidence of Parliament, an election could be held at an earlier date.

III. THE 27 CONSTITUTIONAL PRINCIPLES

(adopted by the plenary of the Multi-Party Negotiating Process on 17 and 18 November 1993)

1. The constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

2. The constitution shall be the supreme law of the land, shall be binding on all organs of Government, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

3. There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

4. The judiciary shall be competent, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the constitution and all fundamental rights.

5. There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

6. Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

7. Formal legislative procedures shall be adhered to by legislative organs at all levels of Government.

8. The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

9. Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognized and protected.

10. All shall enjoy universally accepted fundamental rights, freedoms and civil liberties, protected by entrenched and justifiable provisions in the constitution.

11. The legal system shall ensure the equality of all before the law and an equitable legal process. The principle of equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

12. The institution, status and role of traditional leadership, according to indigenous law, shall be recognized and protected in the constitution. Indigenous law, like common law, shall be recognized and applied by the courts subject to the provisions of the fundamental rights contained in the constitution and to legislation dealing specifically therewith.

13. Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

14. Amendments to the constitution shall require special procedures involving specified majorities.

15. Government shall be structured at national, state/provincial/regional (SPR) and local levels.

16. At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of principle 12.

17. Each level of Government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of Government shall be made on a basis which is conducive to financial viability at each level of Government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity.

18. The powers and functions of national and SPR governments shall be defined in the constitution. Amendments to the constitution which alters the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the constitution for constitutional amendments, also

require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of Parliament composed of regional representatives, and if the amendment concerns specific SPRs only, the approval of the legislature of such SPRs will also be needed.

19. A framework for local government powers, duties, functions and structures shall be set out in the constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

20. The powers and functions of the national and SPR levels of Government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of Government on an agency or delegation basis.

21. National and SPR governments shall have fiscal powers and functions which will be defined in the constitution. The framework for local government referred to in Principle 19 shall make provision for appropriate fiscal powers and functions for different categories of local government.

22. Each level of Government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that SPRs and local governments are able to provide basic services and execute the functions allocated to them in the constitution.

23. A financial and fiscal commission, representing inter alia each of the SPRs, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, economic disparities between the SPRs as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRs.

24. The following criteria shall be applied in the allocation of powers to the national government and the SPR governments.

24.1. The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the constitution to do so.

24.2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical functional or institutional integrity of the SPR.

24.3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interest of another SPR or the country as a whole, the constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the constitution.

24.4. The essential principles of the constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of Government.

24.5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.

24.6. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.

24.7. Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.

24.8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

24.9. SPR governments shall have powers either exclusively or concurrently with the national government, inter alia:

24.9.1. For the purposes of regional planning and development and the delivery of services, and

24.9.2. In respect of aspects of Government dealing with the specific socio-economic and cultural needs and the general well-being of the inhabitants of the SPR.

24.10. Where mutual cooperation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.

24.11. In the event of a dispute concerning the legislative powers allocated by the constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the constitution, precedence shall be given to legislative powers of the national government.

24.12. The constitution shall specify how powers which are not specifically allocated in the constitution to the national government or to an SPR government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR government.

25. Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organizations and trade unions and to engage in collective bargaining shall be recognized and protected.

26. The independence and impartiality of a commission for administration, a reserve bank, an auditor-general and an ombudsman shall be provided for and safeguarded by the constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the civil service.

27. Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their duties and functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.